

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DUANE E. BEVER	:	JUDGES:
	:	Julie A. Edwards, P.J.
	:	Sheila G. Farmer, J.
Petitioner-Appellee	:	John W. Wise, J.
	:	
-vs-	:	Case No. 2009 CA 00179
	:	
	:	
STATE OF OHIO, et al.,	:	<u>OPINION</u>
	:	
Respondents-Appellants	:	

CHARACTER OF PROCEEDING:	Criminal Appeal from Stark County Court of Common Pleas Case No. 2001 CR 0675
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	May 3, 2010
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APPEARANCES:

For Petitioner-Appellee

For Respondents-Appellants

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Edwards, P.J.

{¶1} Defendant-appellant, Duane Bever, appeals from the June 3, 2009, Judgment Entry of the Stark County Court of Common Pleas dismissing defendant-appellant's petition contesting the application of Senate Bill 10, Ohio's Adam Walsh Act. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} In July of 2001, appellant entered a plea of guilty to one count of gross sexual imposition in violation of R.C. 2907.05(A)(4), a felony of the third degree. As memorialized in a Judgment Entry filed on July 13, 2001, appellant was sentenced to one year in prison. Pursuant to a Judgment Entry filed on July 13, 2001, appellant was determined to be a sexually oriented offender.

{¶3} On or about November 26, 2007, appellant received a Notice of New Classification and Registration Duties, based on Ohio's Adam Walsh Act. Ohio Senate Bill 10 was passed to implement the federal Adam Walsh Act. The notice indicated that appellant was being classified as a Tier II sex offender.

{¶4} On January 3, 2008, appellant filed a Petition to Contest Application of the Adam Walsh Act pursuant to R.C. 2950.031(E) and 2950.032(E). Appellant challenged the constitutionality of S.B. No. 10 which eliminated the prior sex offender classifications and substituted a three-tier classification system based on the offense committed. Appellee argued that application of the Adam Walsh Act to him violated the prohibitions against retroactive and ex post facto laws, interfered with his right to contract violated the separation of powers doctrine, constituted a double jeopardy violation and violated both procedural and substantive due process.

{¶5} Pursuant to a Judgment Entry filed on June 3, 2009, the trial court dismissed appellant's petition, finding Senate Bill 10 to be constitutional.

{¶6} Appellant now raises the following assignments of error on appeal

{¶7} "I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT SENATE BILL 10 DID NOT VIOLATE THE PROHIBITION ON EX POST FACTO LAWS IN ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION.

{¶8} "II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT SENATE BILL 10 DID NOT VIOLATE THE RETROACTIVITY CLAUSE OF ARTICLE II, SECTION 28 OF THE OHIO CONSTITUTION.

{¶9} "III. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT SENATE BILL 10 DID NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE INHERENT IN THE OHIO CONSTITUTION AND THE LEGAL PRINCIPLE OF RES JUDICATA.

{¶10} "IV. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT SENATE BILL 10 DID NOT VIOLATE THE DOUBLE JEOPARDY CLAUSES ON THE OHIO AND UNITED STATES CONSTITUTIONS.

{¶11} "V. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT THE APPLICATION OF SENATE BILL 10 TO THE APPELLANT DID NOT VIOLATE THE PROHIBITION AGAINST IMPAIRING THE OBLIGATIONS OF CONTRACTS CLAUSES OF THE UNITED STATES AND OHIO CONSTITUTIONS.

{¶12} "VI. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT THE APPLICATION OF SENATE BILL 10 TO THE APPELLANT DID NOT VIOLATE DUE PROCESS OF LAW AND THE PROHIBITION AGAINST CRUEL

AND UNUSUAL PUNISHMENT AS GUARANTEED BY THE UNITED STATES AND OHIO CONSTITUTIONS.”

I, II, III, IV, V, VI

{¶13} In his first assignment of error, appellant argues that application of the Adam Walsh Act to his case is unconstitutional in violation of the ex post facto clause of the U.S. Constitution. Appellant also argues, in his second, third, fourth, fifth and sixth assignments of error, that the act is unconstitutionally retroactive, violates double jeopardy and the separation of powers doctrine, constitutes cruel and unusual punishment, violates due process, and unconstitutionally interferes with his right of contract, i.e. his plea agreement with the State in the instant case.

{¶14} Appellant's claims that the Adam Walsh Act is unconstitutional in violation of the ex post facto clause and the retroactivity clause and that the AWA interferes with his right to contract are overruled on the authority of *Sigler v. State*, Richland App. 08-CA-79, 2009-Ohio-2010. Appellant's claims that the Act violates the Double Jeopardy Clause, the prohibition against cruel and unusual punishment, due process, and the separation of powers doctrine are overruled on the authority of *In re Adrian R.*, Licking App. No. 08-CA-17, 2008-Ohio-6581. See also *State v. Gallagher*, Coshocton App. No. 08 CA 0022, 2009-Ohio-2470.

{¶15} Appellant's first, second, third, fourth, fifth and sixth assignments of error are, therefore, overruled.

{¶16} Accordingly, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Edwards, P.J.

Farmer, J. and

Wise, J. concur

s/Julie A. Edwards

s/Sheila G. Farmer

s/John W. Wise +

JUDGES

JAЕ/d0203

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

DUANE E. BEVER

Petitioner-Appellee

-VS-

STATE OF OHIO, et al.,

Respondents-Appellants

JUDGMENT ENTRY

CASE NO. 2009 CA 00179

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to appellant.

s/Julie A. Edwards

s/Sheila G. Farmer

s/John W. Wise

JUDGES